

**GRANDVIEW CITY COUNCIL  
COMMITTEE-OF-THE-WHOLE  
MEETING AGENDA  
TUESDAY, JULY 10, 2018**



**COMMITTEE-OF-THE-WHOLE MEETING – 6:00 PM**

**PAGE**

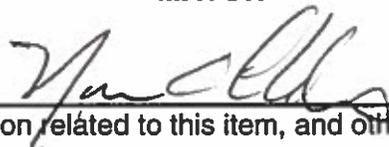
1. **CALL TO ORDER**
2. **ROLL CALL**
3. **PUBLIC COMMENT** – At this time, the public may address the Council on any topic whether on the agenda or not, except those scheduled for public hearing.
4. **NEW BUSINESS**
  - A. Swimming pool splash pad update – Recreation & Conservation Office Grant
  - B. Resolution authorizing the Mayor to sign a Public Defender Agreement for conflict indigent defense counsel with Troy Lee & Associates, Inc. 1-13
  - C. Street tree removal report
5. **OTHER BUSINESS**
6. **ADJOURNMENT**

**CITY OF GRANDVIEW  
AGENDA ITEM HISTORY/COMMENTARY  
COMMITTEE-OF-THE-WHOLE MEETING**

<b>ITEM TITLE</b>  Resolution authorizing the Mayor to sign a Public Defender Agreement for conflict indigent defense counsel with Troy Lee & Associates, Inc.	<b>AGENDA NO.</b> New Business 4 (B)  <b>AGENDA DATE:</b> July 10, 2018
<b>DEPARTMENT</b>  City Attorney & City Clerk	<b>FUNDING CERTIFICATION</b> (City Treasurer) (If applicable)

**DEPARTMENT HEAD REVIEW**

Anita Palacios, City Clerk (Municipal Court) 

<b>CITY ADMINISTRATOR</b>  	<b>MAYOR</b>  
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**ITEM HISTORY** (Previous council reviews, action related to this item, and other pertinent history)

The City contracts with Yakima County District Court for municipal court services. Under the terms of the contract, the City must provide indigent defense services to indigent defendants. In the event of a conflict with the current public defender, the City must also provide alternate counsel for indigent defendants.

**ITEM COMMENTARY** (Background, discussion, key points, recommendations, etc.) Please identify any or all impacts this proposed action would have on the City budget, personnel resources, and/or residents.

Currently, the City has three attorneys, Daniel Polage, George Hansen and William Shuler, providing conflict indigent defense counsel. On June 25, 2018, Mr. Schuler provided notice to terminate his contract with the City for conflict indigent defense services, copy attached. It would be in the best interest of the City to have more than two conflict indigent defense counsel contracts.

The City has negotiated contract terms with Troy Lee & Associates, Inc., to provide conflict indigent defense counsel commencing July 1, 2018 through June 30, 2019 in the amount of \$90 per hour plus mileage, copy attached.

**ACTION PROPOSED**

Move a resolution authorizing the Mayor to sign a Public Defender Agreement for conflict indigent defense counsel with Troy Lee Associates, Inc., to the regular Council meeting for consideration.

# MENKE JACKSON BEYER, LLP

Attorneys at Law

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QUINN N. PLANT  
SEANN M. MUMFORD

G. SCOTT BEYER, *Of Counsel*

June 25, 2018

*Via Email and U.S. Mail*  
Mr. William Schuler  
1540 Old Naches Highway  
Naches, WA 98937  
[countrylaw@hotmail.com](mailto:countrylaw@hotmail.com)

Re: City of Grandview Public Defender Agreement

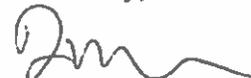
Dear Mr. Schuler:

Thank you for speaking with me on June 25, 2018. I understand from our conversation that you are unable to take new criminal misdemeanor cases on behalf of the City of Grandview. You indicated a desire to terminate the existing contract for conflict indigent defense services.

Please consider this letter to be notice pursuant to Section 18 of the contract that the City of Grandview will terminate the existing contract with your office for conflict indigent defense services.

Please do not hesitate to contact me if you have any questions or concerns. Thank you.

Yours truly,

  
QUINN N. PLANT

QNP:nkb

cc: Norm Childress, Mayor, City of Grandview  
Anita Palacios, City Clerk, City of Grandview

**RESOLUTION NO. 2018-\_\_\_**

**A RESOLUTION OF THE CITY OF GRANDVIEW, WASHINGTON,  
AUTHORIZING THE MAYOR TO SIGN A PUBLIC DEFENDER AGREEMENT  
FOR CONFLICT INDIGENT DEFENSE COUNSEL WITH  
TROY LEE & ASSOCIATES, INC.**

**WHEREAS**, the City of Grandview contracts with the Yakima County District Court for municipal court services; and,

**WHEREAS**, under the terms of the Yakima County District Court contract, the City is to provide indigent defense services to indigent defendants; and,

**WHEREAS**, the City is also to provide alternate counsel for indigent defendants (“conflict counsel”) should there be a conflict with the current public defender; and,

**WHEREAS**, the City of Grandview and Troy Lee & Associates, Inc., have negotiated a contract for conflict indigent services commencing July 1, 2018 and expiring on June 30, 2019; and,

**WHEREAS**, the City Council of the City of Grandview finds it to be in the interest of the City of Grandview to enter into a contract with Troy Lee & Associates, Inc., in the form attached hereto, for the provision of conflict indigent defense services;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRANDVIEW, WASHINGTON**, as follows:

The Mayor is hereby authorized to enter into a contract for conflict indigent defense services with Troy Lee & Associates, Inc., in the form attached hereto and to take such other action as necessary to effectuate said contract.

**PASSED** by the **CITY COUNCIL** and **APPROVED** by the **MAYOR** at its regular meeting on July \_\_\_\_, 2018.

**MAYOR**

\_\_\_\_\_  
**ATTEST:**

\_\_\_\_\_  
**CITY CLERK**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**CITY ATTORNEY**

**CITY OF GRANDVIEW  
PUBLIC DEFENDER AGREEMENT**

THIS AGREEMENT, made and entered into this \_\_\_ day of July 2018, by and between Troy Lee & Associates, Inc., hereinafter the "Public Defender", and the CITY OF GRANDVIEW, a municipal corporation, hereinafter referred to as the "City".

WHEREAS, the Public Defender is an attorney licensed to practice law in the State of Washington, with offices at 117 N. 3rd Street, #201, Yakima, WA, 98901; and

WHEREAS, the parties hereto are desirous of effectuating an agreement whereby the Public Defender will provide legal services for one indigent defendant in the Grandview Municipal Court and its various departments; now, therefore,

IT IS HEREBY mutually agreed as follows:

1. **Duties.** The Public Defender shall provide high quality defense attorney services for indigent defendants charged with misdemeanor and gross misdemeanor allegations occurring within the City of Grandview and processed by the City of Grandview Municipal Court where the City's primary public defender has a conflict that prevents representation of the defendant or defendants.

2. **Public Defender Availability.** Public Defender must be available by telephone 24 hours a day, seven (7) days a week, for each week of the year in order to give legal advice to the client described in Section 1 herein during the course of representing said client.

3. **Administrative and Support Services.** Public Defender shall be responsible for administrative costs associated with providing legal representation. Such costs include, but are not limited to, travel, telephones, law library, electronic research, financial accounting, case management systems, computers, software, office space, supplies, training, meeting reporting requirements imposed by the City, the WSBA and the Washington Supreme Court, and other costs necessarily incurred in the day-to-day management of the contract. Public Defender shall maintain an office that accommodates confidential meetings with clients. Public Defender shall staff their office with an appropriate number of support staff and other support services, including a postal address and adequate telephone service to ensure prompt response to client contact. Public Defender shall maintain appropriate computer/word processing equipment in order to handle the paperwork generated by the contract case load as well as to comply with all reporting procedures.

4. **Insurance.** Without limiting the Public Defender's indemnification, it is agreed that the Public Defender shall maintain in force, at all times during the term of this Agreement, a policy or policies of insurance covering its operation as described below.

**A. General Liability Insurance**

The Public Defender shall maintain continuously public liability insurance with limits of liability not less than Two Hundred Fifty Thousand Dollars (\$250,000) for each occurrence, personal injury, and/or property damage liability.

The Public Defender shall provide a certificate of insurance or, upon written request of the City of Grandview, a duplicate of the policy as evidence of insurance protection. The Public Defender shall immediately notify the City of any communication with their insurance provider canceling or threatening to cancel insurance coverage under this provision.

**B. Professional Liability Insurance**

The Public Defender shall maintain or ensure that its professional employees maintain professional liability insurance for any and all acts which occur during the course of their employment with the Public Defender which constitute professional services in the performance of this Agreement. For purposes of this Agreement, professional services shall mean any services provided by a licensed professional.

Such professional liability insurance shall be maintained in an amount not less than Two Hundred Thousand Dollars (\$200,000) combined single limit per claim/aggregate. The Public Defender further agrees that it shall have sole and full responsibility for the payment of any funds where such payments are occasioned solely by the professional negligence of its professional employees and where such payments are not covered by any professional liability insurance, including but not limited to the amount of the deductible under the insurance policy. The Public Defender shall not be required to make any payments for professional liability, if such liability is occasioned by the sole negligence of the City. The Public Defender shall not be required to make payments other than its judicially determined percentage, for any professional liability which is determined by a court of competent jurisdiction to be the result of the comparative negligence of the Public Defender and the City.

Such insurance shall not be reduced or canceled without thirty (30) days' prior written notice to the City. If such insurance is obtained on a "claims made" basis, the Public Defender will continue to carry coverage for not less than three (3) years after expiration of this Agreement, and will provide a certificate in form and content satisfactory to the City demonstrating such continuing

coverage. The Public Defender shall provide certificates of insurance or, upon written request of the City, duplicates of the policies as evidence of insurance protection.

**C. Workers' Compensation**

The Public Defender shall maintain Workers' Compensation coverage as required by law. The Public Defender shall provide a certificate of insurance or, upon written request of the City, a certified copy of the policy as evidence of insurance protection.

5. **Specific Duties.** The Public Defender shall provide services necessary or incidental to the performance of the work set forth in the PUBLIC DEFENDER - STATEMENT OF WORK - EXHIBIT A and consistent with CLIENT REPRESENTATION PRACTICE GUIDELINES- Exhibit B. The Public Defender acknowledges and agrees that the City may make changes to the specific duties of the Public Defender as necessary to maintain conformity with the Washington State Rules of Professional Conduct as well as case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. No such changes will be grounds for additional or revised compensation under this Agreement, unless the Public Defender demonstrates to the City's reasonable satisfaction that the change imposes an undue burden on the Public Defender's ability to provide the services required under this Agreement.

6. **Term and Renegotiation.** This Agreement shall commence on July 1, 2018 and expires on June 30, 2019.

7. **Compensation.** In return for the above-enumerated services, the Public Defender shall receive compensation in an amount of \$90.00 per hour plus mileage at the current I.R.S. rate, payable upon proper voucher for the same, submitted by the Public Defender and received by the City Clerk at City Hall, Grandview, Washington. Payment shall be sought and paid upon certification that the case has been resolved and closed. All payments shall be made to:

Troy Lee & Associates, Inc.  
117 N. 3rd Street, #201  
Yakima, WA 98901

For purposes of compensation, case will be "resolved" and may be closed by Public Defender, and he may request to withdraw, after a finding of guilt in a pending criminal case, after the probation matter for which a hearing is currently set is resolved, or after the issues to be reviewed on a Deferred Prosecution or SOC have been decided.

8. **Client Transport.** Public Defender, or his employees or subcontractors, shall not transport clients by vehicle (personal or otherwise) while undertaking services pursuant to this Agreement. In the event Public Defender does transport clients during the course of representation as contemplated in this Agreement, Public Defender hereby agrees to release, indemnify, protect, defend and save harmless the City and its elected and appointed officials, employees, volunteers, and agents from all claims, actions, or damages of any kind and description which may occur to or be suffered by any person or persons, corporation, or property arising, directly or indirectly, out of such transport, caused or contributed thereto by the Public Defender or his employees or subcontractors.

9. **Expert Witnesses.** The City shall, in addition, compensate the Public Defender for all expert witness fees incurred by the Public Defender on behalf of indigent clients covered by this Agreement upon application and approval of the court.

10. **Costs and Fees Assessed Against Defendants.** Any and all payments for reimbursement of court-appointed attorney's fees, as ordered and assessed by the Grandview Municipal Court or other court having jurisdiction to hear a City case, shall be payable by defendant directly to the Grandview Municipal Court.

11. **Assignment.** The Public Defender shall not assign, transfer, or subcontract this Agreement without obtaining prior written approval from the City.

12. **Successors Bound.** Subject to the provisions of Section 11, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their successors, and assigns.

13. **Ethic Compliance, Reports, and Training.** The Public Defender will provide the aforementioned services in conformity with all applicable Rules of Professional Conduct and will provide the Municipal Court and the City with any reports, fiscal or otherwise, which are reasonably required in the performance of the Municipal Court's and the City's responsibilities. An annual report shall be provided by the Public Defender on or before August 1 of each year. The report must include a statement of hours billed for nonpublic defense legal services in the previous calendar year, including number and types of private cases, as the same may be required by RCW 10.101.050, as now exists or may be subsequently amended. The Public Defender agrees to attend training approved by the Washington Office of Public Defense at least once per calendar year, as the same may be required by RCW 10.101.050 and 10.101.060, as now exist or may be subsequently amended.

14. **Taxes and Assessments.** The Public Defender shall be solely responsible for compensating its employees and for paying all related taxes,

deductions and assessments, including but not limited to, leasehold excise taxes, federal income tax, FICA, social security tax, assessments for unemployment and industrial injury, and other deductions from income which may be required by law or assessed against either party as a result of this Agreement. In the event the City is assessed a tax or assessment as a result of this Agreement, the Public Defender shall pay the same before it becomes due.

15. **Independent Contractor.** The parties agree that the Public Defender is an independent contractor with the responsibility and authority to control and direct the performance of the details of the work described herein in accordance with the terms and conditions of this Agreement. The implementation of contracted activities and the results to be achieved are solely the responsibility of the Public Defender. No agent, employee, subcontractor, or representative of the Public Defender shall be deemed to be an employee, agent, servant, or representative of the City or of the City of Grandview Municipal Court for any purpose, and the employees, agents, subcontractors, or representatives of the Public Defender are not entitled to any of the benefits the City provides for its employees. The Public Defender will be solely and entirely responsible for his acts and for the acts of his agents, employees, subcontractors, or otherwise, during the performance of this Agreement.

16. **Indemnity.** The Public Defender hereby agrees to release, indemnify, protect, defend and save harmless the City and its elected and appointed officials, employees, volunteers, and agents from all claims, actions, or damages of any kind and description which may occur to or be suffered by any person or persons, corporation, or property arising, directly or indirectly, out of the operation of this Agreement, caused or contributed thereto by the Public Defender or his employees or subcontractors. Provided, however, that nothing herein shall be deemed to require the Public Defender to indemnify the City or its elected or appointed officials, agents, volunteers, or employees for injury to persons, corporation, and/or property arising from the sole negligence of the City and its elected or appointed officials, employees, volunteers, and agents. In case of suit or action brought against the City and/or its elected or appointed officials, agents, volunteers, and employees for damages arising out of or by reason of any of the above-mentioned causes, the Public Defender agrees to pay all costs of defense, including reasonable attorney's fees and any judgment.

17. **Non discrimination.** The Public Defender shall not discriminate on the basis of race, creed, color, national origin, or physical, mental, or sensory handicap in the performance of this Agreement.

18. **Termination.** The City of Grandview may terminate this Agreement, with or without cause, upon ninety (90) days written notice sent by certified mail to the Public Defender at the address listed in this Agreement. The parties shall negotiate a reasonable fee for services to complete client representation which cannot be done through substituted counsel.

19. **Governing Law.** This Agreement has been and shall be construed as having been made and delivered within the State of Washington, and it is mutually understood and agreed to by each party hereto that this Agreement shall be governed by the laws of the State of Washington both as to interpretation and performances.

20. **Venue.** Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in the Superior Court for Yakima County, Washington

21. **Integration.** It is understood and agreed that all understandings and agreements, whether written or oral, heretofore had between the parties hereto are merged in this Agreement, which alone fully and completely expresses their agreement, that neither party is relying upon any statement or representation not embodied in this Agreement, made by the other, and that this Agreement may not be changed except by an instrument in writing signed by both parties.

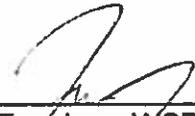
22. **Waiver of Breach.** A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

DATED this \_\_\_\_ day of June, 2017.

CITY OF GRANDVIEW

PUBLIC DEFENDER

By: \_\_\_\_\_  
Mayor Norm Childress  
207 West Second Street  
Grandview, WA 98930

By:  \_\_\_\_\_  
Troy Lee, WSBA #30527  
117 N. 3rd Street, #201  
Yakima, WA 98901

ATTEST:

\_\_\_\_\_  
City Clerk

## EXHIBIT A

### PUBLIC DEFENSE STATEMENT OF WORK

1. **PUBLIC DEFENDER CONTRACTOR DUTIES AND RESPONSIBILITIES**
  - The Public Defender shall provide high quality indigent defense representation in the cases assigned to it by the Grandview Municipal Court. The representation shall be consistent with **EXHIBIT B, CLIENT REPRESENTATION PRACTICE GUIDELINES** as set forth below, and with the City's adopted standards for the delivery of public defense services. The representation shall be provided in a professional and skilled manner and shall be in compliance with the Washington State Rules of Professional Conduct as well as case law and applicable court rules defining the duties of counsel and the rights of defendants in criminal cases. The Public Defender's primary and most fundamental responsibility is to promote and protect the best interests of the client.
  
2. **TASKS** – The Public Defender shall perform the following tasks with regard to each case to which the Public Defender is appointed.
  - A. Maintain a law office with a suitable client interview facility. The Public Defender will provide adequate phone lines, computers, postage, office equipment, office supplies, office furniture and legal research tools to maintain a smooth-running and efficient law office.
  - B. Receive notices of appointment for indigent defendants each court day. Set up and maintain files on each assigned defendant.
  - C. Establish and maintain client contact, keep the client informed of the progress of the case, and effectively provide legal advice to the client throughout the representation.
  - D. Timely interview defendants in custody anywhere in Yakima County.
  - E. Meet at least weekly with the Assigned Prosecutor to discuss pending matters.
  - F. Maintain continuity of representation at all stages of a case, including attendance at all first appearance proceedings, such as arraignments, for in-custody defendants. Except for illness, vacation or occasional conflicts, the assigned Public Defender shall appear at all Municipal Court hearings with their clients.

### **3. COMPLAINTS**

- A. A method to respond promptly to indigent defendant client complaints shall be established by the Public Defender. If the attorney and client cannot resolve the complaint amicably, the attorney shall ask the court for permission to withdraw and substitute new counsel. The complaining client should be informed as to the disposition of his or her complaint within a reasonable period of time. If the client feels dissatisfied with the evaluation and response received, he or she should be advised of the right to complain to the Washington State Bar Association.
- B. The Public Defender shall notify the City and respond in writing to the City within seven (7) days of learning of any complaint against the Public Defender or against the City relating to the provision of indigent defense legal representation.
- C. The Public Defender shall immediately notify the City of Grandview in writing when it become aware that a complaint lodged with the Washington State Bar Association has resulted in reprimand, suspension, or disbarment.

## EXHIBIT B

### CLIENT REPRESENTATION PRACTICE GUIDELINES

Meet and communicate regularly with the client

- **Thoroughly explain to clients the constitutional, statutory and other rights that they have with regards to their case.**
- **Thoroughly explain to clients the elements of the offense(s) that the City must prove in order to obtain their conviction at a trial.**
- **Describe case procedures and timelines.**
- **Listen to client's questions and respond to them.**
- **Enable clients to candidly communicate with counsel.**
- **Facilitate agreements by realistically evaluating allegations and evidence with clients.**
- **Promptly communicate all offers of settlement.**

Prepare cases well

- **Conduct high quality, early case investigation.**
- **Conduct early case negotiations.**
- **Use discovery appropriately.**
- **Prepare for and participate in alternate resolution opportunities that may be available.**
- **Obtain experts and evaluators for cases involving disability, mental health, substance abuse or similar issues, when appropriate.**
- **Draft well-researched and written motions and other legal memoranda and other documents.**
- **Competently and aggressively litigate hearings and trials if no agreement is reached.**
- **Appear at all court hearings with clients.**

Ensure clients have adequate access to services, including court ordered treatment and/or counseling

- **Explain the importance of obtaining court ordered treatment and/or counseling services to clients.**
- **Develop a thorough knowledge of the resources available.**
- **Explore with clients ways to effectively participate in court ordered treatment and/or counseling.**
- **Ask clients for feedback if obstacles prevent or impede their participation, and follow up with the agency and in court when appropriate.**

- **In appropriate cases, encourage clients to obtain necessary evaluations and enroll in counseling and/or treatment even before ordered by the court to do so.**

Prevent continuances and delays within attorney's control

- **Treat all cases assigned to counsel with the highest priority.**
- **Avoid over scheduling whenever possible.**
- **Request continuances only if they are needed for substantive reasons.**